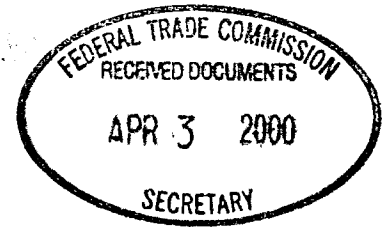


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Allan Ratner
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March 31, 2000



By Electronic Delivery

**Freddie
Mac**

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Gramm-Leach-Bliley Act Privacy Rule, 16 CFR Part 313—Comment

Dear Secretary Clark:

Freddie Mac submits these comments to the Federal Trade Commission on the notice of proposed rulemaking published in the *Federal Register* on March 1, 2000 to carry out the privacy provisions of the Gramm-Leach-Bliley Act (G-L-B Act), Pub. L. No. 106-102. Freddie Mac has a long-standing commitment and practice of protecting the privacy of mortgagors' personal financial information. We support the consumer privacy protections afforded by the Commission's proposal.

Freddie Mac is a shareholder-owned government-sponsored enterprise established by Congress to provide a continuous flow of funds to mortgage lenders in support of homeownership and rental housing. Congress established Freddie Mac to support the overall housing finance market, and charged Freddie Mac with providing stability in the secondary market for residential mortgages; responding appropriately to the capital markets; providing ongoing assistance to the secondary market for residential mortgages by increasing liquidity; and improving the distribution of mortgage funds.¹

Freddie Mac provides a continuous flow of mortgage funds by purchasing mortgage loans from mortgage lenders and by purchasing mortgage-related securities. Because we are a secondary mortgage market institution, we do not deal directly with consumers in the ordinary course of our business. Freddie Mac does not sell or transfer nonpublic personal information of consumers, and does not furnish the names, financial records or other personally identifiable information of consumers to anyone except the lender which originates and services the consumer's mortgage, the mortgage insurance company which insures the consumer's mortgage, the credit repositories from which we obtain records

¹ Federal Home Loan Mortgage Corporation Act, § 301, 12 U.S.C. Note to § 1451.

needed to manage our mortgage risks safely and soundly, and federal regulators as required by law.

Our summary views of the Commission's proposal are set forth below.

- Freddie Mac strongly supports the Commission's proposed interpretation of the G-L-B Act's exclusion from the definition of financial institution to apply when a secondary mortgage market institution sells or transfers information within the general exceptions to the notice and opt-out requirements. This interpretation is consistent with general principles of statutory construction and the explicit congressional intent behind the exclusion.
- Freddie Mac recommends against imposing a confidentiality agreement requirement as a condition of maintaining the exclusion from the definition of financial institution. Freddie Mac already uses confidentiality agreements to protect against inappropriate disclosures of personal financial information.
- Freddie Mac recommends against placing regulatory restrictions on the uses or redisclosure of nonpublic personal information in ways and in forms that are not personally identifiable, because the G-L-B Act does not cover information that is not personally identifiable and this further restriction may inhibit the flow of consumer credit.
- Regarding the proposed definition of "nonpublic personal information," Freddie Mac supports adoption of Alternative B under which information is "publicly available information" if it could be obtained from a public source, regardless of its actual source. Any information that is available by consulting public records should be considered publicly available information.

Preservation of Efficient Secondary Mortgage Market Operations, Proposed Section 313.3(j)

The principal entity subject to the G-L-B Act and the Commission's proposal is a "financial institution." Because secondary mortgage market institutions do not engage in mortgage transactions directly with consumers, Congress determined that "[s]weeping them within Title V's purview would have created burdens and uncertainty without furthering the Title's consumer protection objectives." 145 CONG. REC. H11518-19 (daily ed. Nov. 4, 1999) (statement of Congressman Bachus). Accordingly, the G-L-B Act excludes from the definition of financial institution those institutions chartered by Congress specifically to engage in securitizations, secondary market sales and similar transactions related to a transaction of the consumer as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party. The Commission interprets this exclusion from the definition of financial institution to apply when a secondary mortgage market institution sells or transfers information as permitted by the general exceptions to the notice and opt-out requirements in proposed sections 313.10 and 313.11, and invites comments on this interpretation.

Freddie Mac strongly supports the Commission's interpretation of the G-L-B Act's secondary market exclusion. The Commission's interpretation is consistent with the statutory framework, general principles of statutory construction and the explicit congressional intent behind the exclusion.

The G-L-B Act contains general exceptions permitting transfers of nonpublic personal information without consumer notice and opportunity to opt-out which cover Freddie Mac's business activities. In order to give meaning to the exclusion from the definition of financial institution, the exclusion must be read to apply to the transfers of information that are permitted by the Act and that cover Freddie Mac's business activities.

Under any other reading, the exclusion could never apply to the secondary mortgage market institutions described in the exclusion. That is, as long as a secondary mortgage market institution transfers information in pursuit of the business Congress chartered them to pursue, which of necessity requires transfers of consumer information, there could never be a situation in which they would not be considered a financial institution, and the exclusion would have no effect. This result is contrary to well-established principles of statutory construction which require that meaning be accorded every part of a statute so that no part is rendered superfluous or unnecessary.

Reading the exclusion to apply to the transfers of information permitted by the G-L-B Act is also supported by explicit legislative history. Congressman Bachus authored the language excluding secondary mortgage market institutions from the definition of financial institution. Congressman Bachus made clear Congress' understanding that "the realities of day-to-day business" for secondary mortgage market companies "necessarily involves the disclosure of [nonpublic personal] information" and Congress did not intend "to interfere with such legitimate actions." 145 CONG. REC. H11518-19 (daily ed. Nov. 4, 1999) (statement of Congressman Bachus). In particular, Congressman Bachus stated,

Let me make clear that the types of 'transfers' that would pull these institutions back within Title V's scope are transfers *other than those contemplated by sections 502(b)(2) or 502(e)*. For institutions covered by Title V, we recognize that the uses of non-public, personal information are legitimate. This same standard applies to the secondary market institutions covered by Section 509(3)(D). *Id.* at. H11519 (emphasis added).

While the Commission's interpretation covers transfers contemplated by section 502(e) of the G-L-B Act (as set forth in proposed sections 313.10 and 313.11), the interpretation does not cover transfers contemplated by section 502(b)(2) (as set forth in proposed section 313.9). Consistent with clear congressional intent, Freddie Mac urges the Commission to change its interpretation to apply to transfers that fall within section 502(b)(2) of the G-L-B Act as set forth in proposed section 313.9 of the Commission's proposal.

Use of Confidentiality Agreements

The Commission requests comments on whether, as a condition of maintaining their exclusion, secondary mortgage market institutions that fall within the exclusion from the definition of financial institution should be required to enter into a confidentiality agreement with nonaffiliated third parties with whom they share information under the exceptions to consumer notice and opt-out. The G-L-B Act does not impose this requirement as a condition of maintaining the exclusion, and neither the Act nor the Commission's proposal require a financial institution to enter into a confidentiality agreement when sharing information under any of the general exceptions to consumer notice and opt-out.

Freddie Mac is committed to protecting the privacy of consumer financial information we obtain in fulfilling our statutory purposes. Freddie Mac customarily enters into confidentiality agreements to protect against inappropriate disclosures of personally identifiable information, and to prohibit institutions that sell and service mortgage loans for us from disseminating such information. For these reasons, we do not believe that a regulatory requirement is needed and recommend against imposing such a requirement as a condition of maintaining the exclusion. In any event, Freddie Mac will continue to use confidentiality agreements to protect against inappropriate disclosures of personal financial information.

Reuse and Redisclosure of Information, Proposed Section 313.12

Section 502(c) of the G-L-B Act provides that a nonaffiliated third party that receives nonpublic personal information may not disclose that information to any other nonaffiliated third party unless the transferring financial institution itself could lawfully do so. The Commission interprets the law to permit a party that receives information to redisclose that information (1) to an entity to whom the original transferring institution could disclose the information pursuant to one of the exceptions in proposed sections 313.9, 313.10 and 313.11; or (2) to an entity to whom the transferring institution could disclose the information in accordance with the notice the institution has provided of its privacy policies. Under the proposal, the consumer can exercise the right to opt-out at any time.

The Commission interprets the statutory exceptions to consumer notice and opt-out to apply only when nonpublic personal information is used for the specific purposes established in those exceptions. Therefore, the proposal provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution in accordance with one of the exceptions to consumer notice and opt-out may use that information "only for the purpose of that exception." The Commission requests comments on whether a nonaffiliated third party should be permitted to use information

obtained under the exceptions for purposes beyond those exceptions if the information is not used in a personally identifiable form.

Using or redisclosing information in ways that do not disclose personally identifiable information was never intended to be captured by the Act and should not be subject to regulatory restrictions. The G-L-B Act applies only to nonpublic personal information and covers only information that is personally identifiable. For this reason, Freddie Mac recommends against placing regulatory restrictions on the uses or redisclosure of nonpublic personal information in ways and in forms that are not personally identifiable to a particular consumer. Imposition of additional restrictions on use of information that do not materially protect consumer privacy runs the risk of inhibiting the ability of lenders to offer a wide variety of low-cost mortgage products to consumers.

Nonpublic Personal Information, Proposed Section 313.3(n)-(o)-(p)

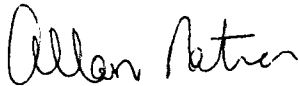
The Commission's proposed rule restates the statutory definition of "nonpublic personal information" which means: "personally identifiable financial information and any list, description or other grouping of consumers (and *publicly available information* pertaining to them) that is derived using any *personally identifiable financial information*." G-L-B Act, § 509(4) (italics added). The Commission requests comment on two alternative definitions of the italicized terms contained within the definition of "nonpublic personal information," Alternative A and Alternative B.

Under Alternative A, information is "publicly available information" only if the financial institution *actually* obtains the information from a public source. Thus, under this Alternative, information obtained by a financial institution from an individual consumer cannot be disclosed without first providing notice and an opportunity to opt-out. Under Alternative B, information is "publicly available information" if it *could be obtained* from a public source, regardless of its actual source. Under Alternative A, a greater amount of information is treated as "nonpublic personal information" than would be the case under Alternative B.

While Title V of the G-L-B Act was designed to provide protections for consumers' nonpublic personal information, it was not designed to inhibit disclosure of public records which by definition should remain public. Whether information is provided directly by a consumer should not determine how publicly available information is treated. Proposed Alternative A reads the word "available" out of the statute. Any information that is available by consulting public records should be considered publicly available information. Freddie Mac supports adoption of Alternative B.

Freddie Mac has a long-standing and unwavering commitment to protecting the privacy of mortgagors' personal financial information. Overall, Freddie Mac supports the Commission's privacy proposal with the changes suggested above. We appreciate the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Allan Ratner". The signature is fluid and cursive, with the first name "Allan" and last name "Ratner" clearly distinguishable.

Allan Ratner

Vice President and Deputy General Counsel

cc: The Board of Governors of the Federal Reserve System
 Office of the Comptroller of the Currency
 Federal Deposit Insurance Corporation
 Office of Thrift Supervision
 Securities and Exchange Commission
 National Credit Union Administration